

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of the)
Pay Telephone Reclassifications)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

REPLY COMMENTS OF THE INTERNATIONAL TELECARD ASSOCIATION

The International Telecard Association ("ITA"), by its attorneys, respectfully submits these reply comments¹ in connection with the Commission's implementation of payphone compensation in the captioned proceeding.²

INTRODUCTION AND SUMMARY

ITA, the principal trade association for the prepaid calling card, or "telecard," industry, explained in its opening comments how telecards offer tremendous competitive and social benefits—including flat-rate, "unit-based" pricing and telephone alternatives for low-income and minority users—that would be directly threatened by indiscriminate application of a carrier-pays payphone compensation mechanism to

¹ Members of the Association that are Regional Bell Operating Companies ("RBOCs") do not subscribe to the sentiments expressed in Section II.C. of these reply comments, entitled "The Commission Should Establish a Compensation Level Based on Marginal Costs That Promotes Future Competition." and related statements about appropriate levels of compensation to payphone operators and owners.

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 96-254, CC Docket No. 96-128 (released June 6, 1996) ("NPRM").

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telecard service providers. ITA therefore proposed that the Commission:

- Require that the underlying "800" access carrier be responsible, in the first instance, for compensating payphone owners;
- Define a "completed" telecard call, as it has previously, as one in which the caller reaches the called party;
- Utilize a market proxy (50%) or carrier-provided data to calculate the completion rate on telecard calls; and
- Fashion an adequate transition period to allow the network and administrative changes necessary to support payphone compensation.

Although the majority of commenters in this proceeding have not addressed telecard services in depth, there is a clear consensus among the parties that ITA's proposed approach is appropriate and in the public interest. With one exception, discussed in detail below, all the comments agree that a "completed" call for Section 276 purposes must actually reach a called party; thus, telecard calls, like all other access code calls, are not subject to payphone compensation until a connection is made beyond the call-processing "platform" or intermediate switch. Moreover, AT&T and a number of other commenters agree with ITA (and the Commission) that transaction and billing costs must be minimized in its payphone compensation system. This is the policy underlying ITA's "800 carrier pays" model. Finally, the Telecommunications Resellers Association ("TRA") and other commenters supported ITA's call for a transition period permitting "grandfathering" of outstanding telecards in circulation and carrier technology upgrades necessary to track and record payphone-originated calls.

For its part, the American Public Communications Council ("APCC") agrees that payphone compensation should "be paid by the carrier providing the underlying 800

service, not the debit card issuer.”³ Yet APCC takes the remarkable position that for telecard calls, compensation should be paid on all calls, *completed or otherwise*, as a matter of administrative convenience. This outrageous attempt to force the highly competitive telecard industry into paying fees applicable to no other form of “dial around” payphone traffic is blatantly unlawful and improper. Administrative convenience cannot override the statutory limit of per-call payphone charges to “completed” calls. And as APCC admits in other contexts in its comments, “calls that are answered by a carrier’s call processing platform are not necessarily completed.”⁴ The Commission should reject APCC’s proposal to assess payphone compensation on uncompleted telecard calls.

DISCUSSION

I. A COMPLETED CALL IS ONE IN WHICH THE CALLER ACTUALLY REACHES THE CALLED PARTY

There is no real question that, as used in Section 276, a “completed” call is one in which the caller actually reaches the called party. As ITA pointed out, if the Commission were to impose payphone compensation on telecard service providers where calls only reach the access point of the network, a similar rule would need to be applied to all “950,” “10XXX” and “800” access code calls—including such popular services as 1-800-COLLECT and 1-800-CALL-ATT—placed from payphones.⁵ Nothing in the statute or the NPRM suggests that access code calls should be considered “completed” where the user, whether due to busy signals or no answer, misdialing, invalid PIN or author-

³ APCC Comments at 25. Citations to opening comments filed in this docket will follow the form of “[Party] Comments at ____.”

⁴ APCC Comments at 6 n.3.

ization code, or simply hanging up, only reaches the carrier's network, but not the dialed telephone number.

Parties ranging from Comptel to the RBOC Coalition agree with ITA on this point, which is fully consistent with common sense, Commission precedent and the legislative history of the 1996 Act.⁶ A call is not "completed" for payphone compensation purposes where the caller reaches the access platform of the "dial around" carrier, but not the called party. Indeed, in the context of coinless calls, APCC itself agrees that counting calls as completed merely if the calls reach a switching platform (and provides a "wink back" signal to the payphone) "would overcount complete calls, since calls that are answered by a carrier's call processing platform are not necessarily completed."⁷

It is only in the context of telecards that APCC departs from this correct approach, suggesting that because "the number of companies issuing debit cards is very large, and most of these companies are quite small," the Commission should "classify debit card access numbers as a subscriber 800 number." This is an overt attempt at what could be termed regulatory extortion. APCC knows full well the large percentage—an average of 50%—of uncompleted telecard calls. Its proposal is in effect a plea for double-recovery. As ITA has explained in detail, however, imposing charges of such magnitude on the prepaid calling card industry would destroy many of the

⁵ ITA Comments at 20.

⁶ See e.g., Comptel Comments at 11; RBOC Coalition Comments at 17; AT&T Comments at 2 n.2; Excel Comments at 5-6; Cable & Wireless Comments at 8.

⁷ APCC Comments at 6 n. 3 (emphasis supplied).

entrepreneurial companies providing pro-consumer, extremely price competitive telecard services.

Apart from the magnitude of the compensation APCC proposes, its legal rationale is defective. APCC does not argue, because it cannot, that telecard calls made via "800" access numbers are "subscriber" 800 calls. That is, unlike calls to a catalog retailer or similar toll-free service end user, calls to a telecard provider's "800" number serve only one purpose, namely the access capability for making a telephone call.⁸ Therefore, because telecard calls are *not* subscriber toll-free calls, there is no lawful basis on which the Commission can treat them as if they were. APCC's claims of administrative convenience, which are definitely correct, do not authorize the Commission to mandate compensation where none is due. It might be easier for payphone owners simply to charge all "800" telecard calls a per-call fee, whether or not a call is completed, but that does not make it correct.

ITA entirely agrees that requiring the 800 carrier to pay the payphone provider for the telecard call is an appropriate measure to minimize transaction costs in the telecard context.⁹ APCC's strained definition of completed calls, however, cannot be justified on the basis of minimizing administrative costs. It is unnecessary, inap-

⁸ APCC has previously defined subscriber 800 numbers as "retail 800 . . . Any 800 number that is not a carrier access code (e.g., 800-FLOWERS)." See *Ex Parte* letter from Robert F. Aldrich, Counsel for APCC, to William A. Caton, CC Docket 92-77 at 18 (Oct. 20, 1995). Here, APCC notes that "the debit card call is in a number of ways similar to an access code call," APCC Comments at 25, but never explains how (if at all) a debit card call is "similar to" a subscriber 800 call. In fact, the only similarity is that because many telecard issuers are resellers, they purchase and resell "800" services bought from underlying facilities-based carriers. The Commission cannot classify telecard services as "subscriber" services for this reason, however, because doing so would eviscerate the settled regulatory distinction between resale carriers and end users.

⁹ APCC Comments at 25.

propriate and discriminatory to define a completed telecard call as one to the card provider's intermediate switch or call-processing platform.

It is unnecessary to apply APCC's definition of completed calls because the number of completed telecard calls can be accurately estimated and accounted for without incurring large administrative costs. As presented in ITA's comments, telecard service providers can provide a measure, the Percent of Completed Calls (PCC),¹⁰ to 800 access providers, who can then use this measure to adjust their payments to payphone providers,¹¹ ensuring that payphone providers receive fair compensation for completed calls without overcharging carriers for telecard calls.

Currently, industry data indicate that approximately 50% of telecard calls are completed. The Commission should adopt this measure as the initial PCC for all telecard service providers that rely on an 800 carrier for access service. Where the telecard service provider is also the 800 service provider, the Commission should permit the use of either the 50% surrogate or the actual measure of completed calls, depending on the technical capabilities of the provider.¹² The Commission has previously endorsed the use of surrogates (*e.g.* Percent Interstate Usage (PIU) factors) for interstate access purposes. Additionally, in this proceeding APCC and AT&T have both proposed the use of surrogates where administrative costs would be excessive.

¹⁰ ITA Comments at 21.

¹¹ This process would be a straightforward extension of software needed by carriers to compensate payphone providers. The 800 service provider is aware of the 800 number assigned to a telecard service provider. When computing its payphone compensation, the carrier would simply multiply the number of calls to the 800 numbers associated with telecard service providers by the PCC to arrive at the number of completed calls.

¹² The Commission should also determine that industry should review and agree to the appropriate PCC every two years. In the event, industry can not agree, the Commission would then determine a measure for PCC.

otherwise.¹³ Thus, the use of the PCC measure is consistent with previous Commission actions, is similar to APCC and AT&T proposals in this proceeding, and does not require an overbroad definition of completed calls.

APCC's definition of a completed call in the telecard context is inappropriate because it ignores Commission precedent, the legislative history of the Telecommunications Act of 1996 and common sense. Numerous parties have identified Commission precedent holding that a call is complete only when the calling party is actually connected to the called party.¹⁴ The definition follows from the Commission's recognition that it must look at the end-to-end nature of a call and that a caller is seeking to speak with the called party, not an intermediate switch. It follows that in the telecard context, when looking at the end-to-end nature of the call, that a completed call must also be defined as one in which the calling party actually is connected with the called party. Furthermore, as ITA demonstrated in its comments the legislative history of the 1996 Act fully supports this definition.¹⁵ Finally, common sense demands that the Commission disregard APCC's completed call definition that a call is complete when a caller is connected with an intermediate switch. After all, would any caller from a

¹³ "For carriers that, because of their small size, are unable to track access code calls, the Commission should require such carriers pay flat-rate compensation based on their *estimated percentage of access code calls*." APCC Comments at 27 (emphasis supplied). See also, AT&T Comments at 13-14. AT&T states that it is able to quantify dial-around calls from payphones that use an access code as long as the originating phone is not located in an area in which AT&T cannot retrieve the ANI. AT&T states that it does not receive ANI from about 2% of payphones. It suggests that "in order to calculate compensation from phones where AT&T does not receive ANI, the Commission can establish a *surrogate* based upon studies made from a *representative sample* of phones which ANI is sent and received" (emphasis supplied).

¹⁴ See e.g., ITA Comments at 17-19, citing *Long Distance/USA, Inc. v. Bell Tel. Co. of Pennsylvania*, 10 FCC Rcd. 1634 (1995).

¹⁵ ITA Comments at 19-20.

payphone consider their call complete when they were connected to an intermediate switch? The self evident answer is no.

Finally, APCC's definition of completed calls cannot be applied by the Commission because it discriminates against telecard issuers. Under APCC's approach, for other types of access code traffic a call would not be complete when it reached an intermediate switch, while it would be in the telecard context. Yet neither APCC nor any other party has identified any way in which telecard "800" calls differ from other forms of dial around access code calls. APCC's approach would also discriminate against calls placed using a telecard compared to payphone-originated "0+" and coin calls. Ordinarily, when a caller places a 0+ or coin call from a payphone, the caller does not incur a charge when their call is not completed (*e.g.*, busy, no answer), even though intermediate switches have processed the call. Under APCC's definition, in the telecard context the caller would have to pay a charge when the result of his call attempt is the same—not being connected to the called party. Such a scheme would favor payphone providers and their presubscribed carriers, in that a caller would choose to use the presubscribed OSP or make coin calls rather than incur "automatic" telecard charges.

II. THE COMMISSION'S PAYPHONE COMPENSATION RULES MUST MINIMIZE TRANSACTION COSTS, BE FAIR TO ALL, AND BENEFIT THE PUBLIC GOOD

The Commission must not lose sight of the ultimate objectives of Section 276 of the 1996 Act. Some commenters seem to have done so. Section 276 seeks to reform payphone service to the "benefit of the general public."¹⁶ The Commission correctly

¹⁶ 47 U.S.C. § 276(b)(1).

determined in the NPRM that to achieve this objective it must minimize transaction costs associated with any new payphone compensation mechanism.¹⁷ The Commission should ensure that its reforms are fair, not just to payphone providers but to others, such as telecard users, that rely on payphones for a significant portion of their calls. The Commission must establish reforms that benefit the public, not just payphone service providers.

Some proposals by commenters will not benefit the public and are not fair. A set use fee, as proposed by some commenters, where the caller deposits coins on all calls does not benefit the public. Such a system would impose unnecessary burdens on callers and in some cases, namely for low-income callers, may prevent them from having access to a telephone. Additionally, exorbitant compensation rates suggested by some commenters that provide windfall profits 10 times the marginal cost of placing a call from a payphone would impose disastrous hardships on telecard issuers and users. Finally, parties' comments support the need to ensure an adequate transition period of not less than a year in order to ensure an orderly and cost effective transition to a new payphone compensation mechanism.

A. The Commission Should Adopt a Per-Call "Carrier-Pays" Compensation Mechanism That Assesses Charges on Toll-Free Access Carriers for Completed Telecard Calls

The Commission correctly favored a carrier-pays compensation mechanism in the NPRM.¹⁸ A carrier-pays compensation mechanism will minimize transaction costs and avoid unnecessary hardships on calling parties. In its comments, ITA identified

¹⁷ NPRM ¶ 28.

unique and complex issues for the telecard industry that require that for telecard calls, the underlying provider of toll-free access service should be responsible in the first instance for payphone compensation charges. Under such a system telecard providers would pay their fair share for payphone compensation through payments to their toll free service providers.¹⁹

ITA continues to believe that a carrier-pays compensation mechanism which assesses charges on toll-free access carriers for telecard calls is the optimal approach. This approach is consistent with suggestions by a vast number of commenters.²⁰ A few commenters have suggested a set use fee compensation mechanism, in which a caller would be required to deposit coins for all payphone calls. ITA is strongly opposed to such an approach. As stated in its comments, such a system would be devastating to the telecard industry, because one of the primary advantages of telecards is that a caller does not have the burden of carrying coins.²¹ Furthermore, ITA agrees with AT&T that such an approach would undermine toll free calling, be confusing and difficult for consumers and inconsistent with the basic tenet of the Communications Act of 1934 that the Commission should foster telephone service for all.²²

¹⁸ *Id.*

¹⁹ ITA Comments at 12-17.

²⁰ See e.g., Cable & Wireless Comments at 3; AT&T Comments at 2; APCC Comments at 25. Several of these parties who advocate a carrier-pays compensation mechanism suggest that LECs pay compensation directly to the payphone providers and recover these costs through payments by IXC and other service providers. This approach is not inconsistent with ITA's proposal. When IXCs compensated LECs, they would include as a portion of that compensation charges for completed telecard calls. The mechanism for recovery of those charges between an IXC providing toll-free service and the telecard service provider would be left to those parties.

²¹ ITA Comments at 17 n.21.

²² Parties that support a coin deposit approach suggest that this would limit fraud. In the telecard context, assuming the Commission defines completed call as above, fraud from parties placing
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B. The Commission Should Provide a Minimum of a One Year Transition Period Before Requiring Implementation of Its New Payphone Compensation Rules

Under any compensation mechanism adopted by the Commission, technical upgrades, administrative changes and the existence of millions of telecards in the distribution pipeline require a minimum of a one year transition period from when the Commission adopts rules to when they become effective. The technical capability to properly track payphone calls does not exist. Even AT&T, which the Commission assumed had adequate tracking capabilities, indicated that it cannot individually track 800 subscriber and telecard calls to individual payphones.²³ The RBOCs similarly confirm that while tracking capabilities exists, not all carriers have them in place.²⁴

AT&T and others estimate that it would take over one year to develop and implement a system to track toll-free calls from payphones.²⁵ Additionally, administrative changes would be necessary to establish payment mechanisms involving many transactions. Finally, as both ITA and TRA indicated there are many millions of telecards in the distribution pipeline that are based on preexisting prices that cannot be changed.²⁶ Therefore, the Commission must allow an adequate time for these cards to be used prior to imposing a new payphone compensation mechanism.

autodialers on a payphone and dialing 800 numbers is not a problem because these calls would never be connected beyond the telecard service provider's platform

²³ AT&T Comments at 14.

²⁴ RBOC Coalition Comments at 8. It is likely that the tracking mechanisms which the RBOC Coalition claims to exist would need to be modified to correctly account for the impact of Section 276, including properly accounting for completed calls, exemptions for telecommunications relay service calls and possible different treatment for public interest payphones.

²⁵ AT&T Comments at 15. See also Sprint Comments at 13. Sprint suggests that a minimum of 12-15 months would be necessary to track completed calls and pass through a set use fee.

²⁶ ITA Comments at 22-23; TRA Comments at 16

C. The Commission Should Establish a Compensation Level Based on Marginal Costs That Promotes Future Competition²⁷

The exorbitant compensation rates ranging from \$0.40 to \$0.80 per call suggested by some commenters would yield excessive windfall profits for payphone providers while driving telecard service providers out of business and depriving consumers of the unique social benefits provided by telecards. APCC justifies these rates as being based on "market based surrogates" that demonstrate what the market is willing to pay for a payphone call. APCC examined AT&T rates for 0+ traffic and "sent paid" toll calls to develop what it terms an "indication of the market value that consumers are willing to pay to use a payphone to make a toll call."²⁸

This approach to setting the level of payphone compensation is analytically incorrect. It is unlikely that the rates for 0+ and toll calls, where a caller expects to incur a charge, are a reliable indicator of rates that a caller would be willing to pay when placing a call using a toll-free number, in which they expect to incur no charges. Thus, using APCC's approach, the market value that consumers are willing to pay to use a payphone to make a toll free call from a payphone would be zero. Certainly, APCC would not accept zero as the appropriate surrogate for compensation for toll-free calls from payphones.

Additionally, such exorbitant per-call compensation rates would limit access to telephone service for low-income members of the public. Many telecard users rely on telecards and placing calls from payphones because they do not have phone service.

²⁷ Members of the Association that are RBOCs do not subscribe to the sentiments expressed in this section and related statements elsewhere in these reply comments about appropriate levels of compensation to payphone operators and owners.

Establishing such a high payphone compensation rate would be the equivalent of robbing the poor to give to the rich. These callers must use payphones. They would effectively be held hostage to the payphone providers' inflated compensation charge. In some cases, the high compensation charge could effectively prohibit a consumer from using a payphone and significantly limit their ability to place telephone calls. Furthermore, market surrogates based on types of telephone services that many telecard users are prohibited from using either because of poor credit history or low incomes is likely to be a poor indication of the market value such a caller places on using a payphone.

ITA urges the Commission to adopt a reasonable payphone compensation rate based on marginal costs that promotes competition and benefits the public good. Such an approach will minimize the adverse effects on consumers and the fledgling telecard industry. Additionally, a compensation level based on marginal costs would ensure only minimal disruption as reduction in the Carrier Common Line (CCL) charge should be of a similar magnitude. If the Commission suddenly resorted to using an inflated market surrogate to determine the compensation level, this charge would certainly be much larger than the reductions in the CCL charge that should accompany the imposition of a new payphone compensation charge. As competition grows, the Commission can reevaluate the charge level. Until that time, MCI has provided a credible starting point for the determination of the marginal cost associated with a payphone call. Its analysis suggests a compensation charge on the order of \$0.08 per

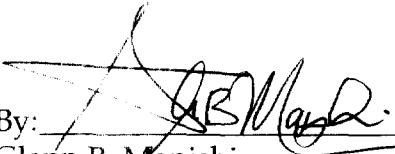
²⁸ APCC Comments at 32.

call.²⁹ The Commission should use this as a starting point to arrive at a compensation level that is fair to all and benefits the public good.

CONCLUSION

The Commission should adopt a payphone compensation system that benefits the general public, not just payphone providers. The Commission can ensure that the public benefits from its reforms by (1) adopting a carrier-pays compensation mechanism in which toll free service providers pay the payphone compensation charge for telecard calls, (2) setting compensation levels based on marginal costs, (3) allowing an adequate transition period, and (4) holding that a "completed call" is one in which a caller is connected to the calling party. APCC's proposal to apply per-call payphone compensation to all telecard calls, whether or not completed, is unlawful and inappropriate, and should be rejected by the Commission.

Respectfully submitted,

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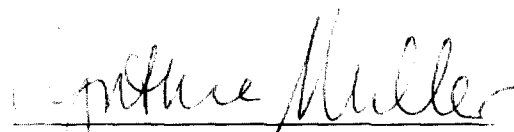
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Dated: July 15, 1996.

²⁹ MCI Comments at 13.

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